

AMENDED IN SENATE APRIL 18, 2006

SENATE BILL

No. 1402

Introduced by Senator Kuehl

February 22, 2006

An act to amend Section 262 of the Penal Code, relating to spousal rape.

LEGISLATIVE COUNSEL'S DIGEST

SB 1402, as amended, Kuehl. Spousal rape.

Existing law defines spousal rape as an act of sexual intercourse accomplished by means of force or violence, when the victim is at the time unconscious, or by threats of retaliation or use of public authority against the victim. Existing law provides, however, that no prosecution will be commenced under these provisions unless the violation was reported to other specified persons within one year of the violation, unless the allegation is corroborated by independent evidence, as specified.

This bill would remove provisions requiring that an allegation of spousal rape has been reported previously or ~~be~~ corroborated by independent evidence in order to be prosecuted.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 262 of the Penal Code is amended to
2 read:

1 262. (a) Rape of a person who is the spouse of the
2 perpetrator is an act of sexual intercourse accomplished under
3 any of the following circumstances:

4 (1) Where it is accomplished against a person's will by means
5 of force, violence, duress, menace, or fear of immediate and
6 unlawful bodily injury on the person or another.

7 (2) Where a person is prevented from resisting by any
8 intoxicating or anesthetic substance, or any controlled substance,
9 and this condition was known, or reasonably should have been
10 known, by the accused.

11 (3) Where a person is at the time unconscious of the nature of
12 the act, and this is known to the accused. As used in this
13 paragraph, "unconscious of the nature of the act" means
14 incapable of resisting because the victim meets one of the
15 following conditions:

16 (A) Was unconscious or asleep.

17 (B) Was not aware, knowing, perceiving, or cognizant that the
18 act occurred.

19 (C) Was not aware, knowing, perceiving, or cognizant of the
20 essential characteristics of the act due to the perpetrator's fraud
21 in fact.

22 (4) Where the act is accomplished against the victim's will by
23 threatening to retaliate in the future against the victim or any
24 other person, and there is a reasonable possibility that the
25 perpetrator will execute the threat. As used in this paragraph,
26 "threatening to retaliate" means a threat to kidnap or falsely
27 imprison, or to inflict extreme pain, serious bodily injury, or
28 death.

29 (5) Where the act is accomplished against the victim's will by
30 threatening to use the authority of a public official to incarcerate,
31 arrest, or deport the victim or another, and the victim has a
32 reasonable belief that the perpetrator is a public official. As used
33 in this paragraph, "public official" means a person employed by
34 a governmental agency who has the authority, as part of that
35 position, to incarcerate, arrest, or deport another. The perpetrator
36 does not actually have to be a public official.

37 ~~(b) Section 800 shall apply to this section.~~

38 (e)

39 (b) As used in this section, "duress" means a direct or implied
40 threat of force, violence, danger, or retribution sufficient to

1 coerce a reasonable person of ordinary susceptibilities to perform
2 an act which otherwise would not have been performed, or
3 acquiesce in an act to which one otherwise would not have
4 submitted. The total circumstances, including the age of the
5 victim, and his or her relationship to the defendant, are factors to
6 consider in apprising the existence of duress.

7 ~~(d)~~

8 (c) As used in this section, “menace” means any threat,
9 declaration, or act that shows an intention to inflict an injury
10 upon another.

11 ~~(e)~~

12 (d) If probation is granted upon conviction of a violation of
13 this section, the conditions of probation may include, in lieu of a
14 fine, one or both of the following requirements:

15 (1) That the defendant make payments to a battered women’s
16 shelter, up to a maximum of one thousand dollars (\$1,000).

17 (2) That the defendant reimburse the victim for reasonable
18 costs of counseling and other reasonable expenses that the court
19 finds are the direct result of the defendant’s offense.

20 For any order to pay a fine, make payments to a battered
21 women’s shelter, or pay restitution as a condition of probation
22 under this subdivision, the court shall make a determination of
23 the defendant’s ability to pay. In no event shall any order to make
24 payments to a battered women’s shelter be made if it would
25 impair the ability of the defendant to pay direct restitution to the
26 victim or court-ordered child support. Where the injury to a
27 married person is caused in whole or in part by the criminal acts
28 of his or her spouse in violation of this section, the community
29 property may not be used to discharge the liability of the
30 offending spouse for restitution to the injured spouse, required by
31 Section 1203.04, as operative on or before August 2, 1995, or
32 Section 1202.4, or to a shelter for costs with regard to the injured
33 spouse and dependents, required by this section, until all separate
34 property of the offending spouse is exhausted.

1		_____
2	CORRECTIONS:	
3	Digest - Pages 1 and 2.	
4		_____